IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 518 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GALABHAI GHAMANBHAI VANKAR

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioner

Mr S R Divetia, APP for Respondent No. 1

MR JM BUDDHBHATTI for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 19/04/99

ORAL JUDGEMENT

Acquittal of the respondent No.2 recorded by the learned Second Joint Judicial Magistrate (First Class) Palanpur in Criminal Case No.1028/84 vide judgment and order dated September 30, 1985 of the offences punishable under sections 451, 504, 506(1) read with section 114 of the Indian Penal Code, is subject matter of challenge in

the present Appeal which is filed by the original complainant under the provisions of Section 378 of the Criminal Procedure Code, 1973.

2. The prosecution case in short is as under:

The election of Sarpanch of Village Malosana, Taluka Vadgam, District Banaskantha had taken place in the year 1983 and Kalubhai Hemrajbhai Patel who was arraigned as original accused No.8, was elected to the said post. According to the appellant, Kalubhai Hemrajbhai Patel was entertaining a suspicion that the complainant had not voted for him, and therefore, instigating original accused No.1 to 7 against the complainant. On February 6, 1983, at about 1.p.m. the complainant had gone to Village Kotdi. The incident is alleged to have taken place at about 2.30 p.m. when the original accused No.1 to 4, after consuming liquor trespassed into the house of the complainant in order to commit offences punishable with imprisonment and respondent No.2 assaulted wife of the complainant with stick as well as abused the wife of the complainant and others and also threatened them with dire consequences. According to the complainant, as wife of the complainant had sustained injuries, she was taken to Chhapi Civil Hospital where she was treated by Dr.Jayantkumar Nandlal. The wife of the complainant lodged information as to non-cognizable offences, and therefore, the Officer-in-Charge of the police station entered the substance of the information in a book kept by such Officer and referred the informant to the learned Magistrate. However, no complaint was filed by the wife of the complainant but the present appellant filed complaint on February 9, 1983 in the Court of learned Judicial Magistrate, First Class, Palanpur against 8 persons namely; (1) Veerabhai Madhabhai Vankar (2) Madha Rama Vankar (3) Ghaman Rama Vankar (4) Raman Jeeva Vankar (5) Galalben Jeeva Vankar (6) Ghamanben Jeeva Vankar (7) Parmoben Veera Vankar and (8) Kalubhai Hemrajbhai Patel for the offences punishable under sections 4571, 323, 504, 506(1) read with section 114 of the Indian Penal Code. The learned Magistrate recorded statement of the complainant and issued summons to the accused for offences punishable under section 451, 323, 504 and 506 read with 114 of the Indian Penal Code. Pursuant to the summons issued by the learned Magistrate, all the eight accused appeared before the learned Magistrate. The learned Magistrate stated to the accused the particulars of the offences of which they were accused and asked them whether they pleaded guilty or had any defence to make. The accused did not plead guilty and claimed to be tried.

Therefore, the appellant examined 5 witnesses namely; (1) Galabhai Gamanbhai. P.W.1 at Exh.18, (2) Puriben Galabhai, P.W.2 at Exh.23, (3) Khanabhai Ghamanbhai, P.W.3 at Exh.28, (4) Methabhai Rajabhai, P.W.4 at Exh.29 and (5) Jayantkumar Nandlal, P.W.5 at Exh.44 in support of his case against the accused. After recording of evidence of the witnesses produced by the appellant was over, the learned Magistrate questioned the accused generally on the case and recorded their further statement under section 313 of the Criminal Procedure Code, 1973. In their statements, the accused denied the case of the appellant. The original accused Nos. 1 to 7 claimed in their further statement that nephew of the complainant Dhana Karsan had lost in the election against the original accused No.8-Kalubhai Hemrajbhai Patel as Sarpanch, and therefore, they were falsely implicated in the case. The original accused No.8 in his further statement claimed that Dhanabhai who is nephew of the complainant had lost against him in the election of Sarpanch and he himself was not present in the Village at the time of incident and had committed no offence at all. Though the original accused Nos. 1 to 7 declared before the Court that they wanted to examine defence witnesses, only one witness namely; Jakshibhai Chelabhai Desai was examined as defence witness at Exh.65.

3. On appreciation of evidence led by the parties, the learned Magistrate held that it was neither proved by the appellant that the original accused Nos. 1 to 4 had trespassed into the house of the complainant after consuming liquor and had given fist and kick blows to the wife of the complainant nor was it proved that they had abused the wife of the complainant or threatened her with dire consequences. The learned Magistrate, further deduced that it was not proved by the appellant that the original accused No.1 who is respondent No.2 in the present appeal had trespassed into the house of the complainant and had caused injuries to the wife of the complainant with stick nor was it proved that the accused Nos. 2 to 4 had abetted causing of injury by original accused No.1 to the wife of the complainant. The learned Magistrate also concluded that it was not proved by the appellant that the original accused Nos. 5 to 7 had abused wife of the complainant or had threatened her to cause physical injury or that accused No.8 had instigated accused Nos. 5 to 7 to abuse the wife of the complainant. In ultimate decision, the learned Magistrate gave benefit of doubt to the original accused Nos. 1 to 4 and honourably acquitted original accused Nos. 5 to 8 by judgment and order dated September 13, 1985 giving rise to the present appeal.

3. Mr S V Raju, learned Advocate appearing for the appellant submitted that the learned Magistrate has given undue importance to the minor discrepancies appearing in the evidence of witnesses examined by the appellant, and therefore, the impugned judgment deserves to be reversed. It was claimed that the fact that the wife of the complainant was injured by respondent No.2 with stick is amply proved not only by the evidence of injured Puriben Ghalabhai Vankar but also by the evidence of two eye witnesses as well as the evidence of Medical Officer, and therefore, the appeal should be accepted. The learned Advocate pleaded that it was established by the appellant beyond reasonable doubt that the respondent No.2 had on February 6, 1983 at about 2.30 p.m. committed criminal trespass by illegally entering into the house of the complainant and committed offence punishable under section 323 of Indian Penal Code and therefore, the respondent No.2 should be convicted of the offences with which he was charged. What was stressed by the learned advocate for the appellant was that without assigning cogent reasons, the learned Magistrate has disbelieved the evidence of injured Puriben Ghalabhai Vankar which is supported by medical evidence, and therefore, the appeal should be allowed. In support of his submissions, the learned Advocate for the appellant placed reliance on the decisions rendered in the case of (1) State of U.P. v. Hari Ram, (1983) 4 SCC 453, (2) D R Bhagare v. State of Maharashtra, AIR 1973 SC 476, (3) Aher Pitha Vajshi v. State of Gujarat, AIR 1983 SC 599, (4) Sate of U.P. v. M K Anthony, AIR 1985 SC 48, (5) State of Jammu & Kashmir v. Hazara Singh, AIR 1981 SC 451, (6) Gurnam Kaur v. Bakshish Singh, AIR 1981 SC 631, (7) State of U.P. v. Shanker, AIR 1981 SC 897 and (8) Pedda Narayanan v. State of Andhra Pradesh, (1975) 4 SCC 153.

4. Mr S R Divetia, learned APP appearing for the State of Gujarat submitted that acquittal of the respondent No.2 is not well-founded at all, and therefore, the appeal filed by the original complainant should be accepted by the Court. Mr J M Buddhbhatti, learned Advocate appearing for the respondent No.2 pleaded that the story as narrated by the appellant not only suffers from vice of exaggeration but is also improbable, and therefore, the well-founded acquittal should be confirmed by the Court. What was stressed was that false implication of several persons in the incident is evident if one reads the evidence of the complainant as well as evidence of the witnesses examined by him and, therefore, the appeal should be dismissed. The learned Advocate for the respondent No.2 claimed that two views

of the matter are possible, and therefore, the appeal should not be accepted.

5. From the authorities cited at the Bar by the learned Counsel for the appellant, it becomes clear that minor disicrepancies appearing in the sworn testimony should not be given undue importance and the Court should try to separate the grain from the chaff and accept the evidence, unless it is found that the testimony of a witness is tainted to the core and falsehood and the truth are inextricably intermined. Applying these principles, the present appeal will have to be decided. It may be stated that the appeal was placed for admission hearing before the Court on April 17, 1986 and leave to appeal was granted only against respondent No.2 who was original accused No.1 whereas leave to appeal was refused so far as rest of the accused were concerned. Under the circumstance, the question which is required to be examined by the court is whether the appellant has proved his case against the respondent No.2 for the offences punishable under Sections 451, 504 and 506(1) read with section 114 of Indian Penal Code. It is relevant to note that after the incident, Puriben Ghalabhai Vankar who is alleged to have received injuries had given information regarding commission of non-cognizable offences which was registered by the police officer In-charge of police station. The said complaint is on the record of the case at Exh.32. In Exh.32 it was mentioned by Puriben Ghalabhai Vankar that the incident had taken place at 3 p.m. and the respondent No.2 after committing trespass had abused her son as well as her daughter-in-law and had given fist and kick blows to them and when she tried to intervene, injury was caused to her by respondent No.2 with a stick on both the legs. It was further stated by her in the said information that thereafter Vankar Metha Rama, Godad Dhana and Gaman Rama were instigating the respondent No.2, and thereafter their wives had also come who had also abused her as well as her son and daughter-in-law. It was also claimed by her in the said information that Parmoben, wife of Veerabhai i.e. respondent No.2 as well as wife of Jeevabhai namely; Ghalal Ramabhai Jeevabhai had come on the scene and after abusing had given fist and kick blows to all and as others intervened, they had run away. In the complaint which was filed by the appellant before the learned Judicial Magistrate, it is stated that the original accused Nos. 1 to 4 had consumed liquor and thereafter, had committed house trespass and tried to know the whereabouts of the appellant and had caused injuries to his wife by giving fist and kick blows. It was also claimed by the appellant in the complaint that respondent

No.1 had given stick blows on different parts of the body and his wife was rescued by his son and daughter-in-law. According to the complainant, respondents No. 5 to 7 had also come to the house of the complainant and when they were abusing the wife of the complainant, respondent No.2 had come again with a sword in his hand but as the door of the house was closed by the son and daughter-in-law of the complaint, his wife, son and daughter-in-law were saved. The evidence of the complainant was recorded at Exh.18. In his deposition the appellant has clearly stated that he had filed the complaint on the basis of information given to him by his wife. If this statement is taken to be true, then there is no manner of doubt that the version given by the injured Puriben before the Police Officer and before her husband is quite different and inconsistent. Injured Puriben claimed in the information lodged with the Police Officer that respondent No.2 had first of all assaulted her son and daughter-in-law with first and kick blows and when she tried to save them, she was assaulted with stick on her legs. It is difficult for a person to give fist and kick blows if he is holding a stick in his hand, and therefore, the version as narrated by injured Puriben is not probable at all. It is proved that wife of the appellant had given information to the Police Officer regarding the incident which was registered as a complaint relating to the non-cognizable offences. Medical evidence on record does not establish that she had sustained serious injuries or was confined to bed and was not able to move at all. Under the circumstance, it is not understood as to why she had not filed complaint and had instructed her husband to file complaint in the matter. The evidence of the appellant is of little help in finding out guilt or otherwise of respondent No.2 because he has in terms stated that he was not present at the time of incident and had gathered the information from his wife Puriben. Evidence of Puriben shows that respondent No.2 as well as Magabhai Ramabhai, Ramanbhai Ramabhai and Ramanbhai Jeevabhai had given fist and kick blows and thereafter the respondent No.2 had caused injuries with stick on her legs as well as on waist. If four persons had given fist and kick blows to her, naturally she would have received visible injuries but she is not supported on this ground by medical evidence at all. Puriben has referred to presence and assault by one Ramanbhai Rama who is not arraigned as an accused at all. If the evidence of Puriben is read in a reasonable manner, the tendency on her part to implicate falsely innocent persons is evident. This witness claimed in her evidence that after the incident, she was admitted in the hospital for 22 days and was treated. However, this

assertion is not born out from the record of the case. Medical Officer has not stated in his evidence that Puriben had sustained serious injuries and was admitted in hospital for 22 days or that she was treated for a period of 22 days. Witness Puriben has clearly admitted in her cross-examination that because Dhana Karsan had lost in the election, she had filed the present case falsely. In view of the categorical admission made by her, the prosecution case becomes highly doubtful and is rightly disbelieved by the learned Magistrate who had advantage of observing the demeanour of the witnesses. Again witness Khanabhai Ghamanbhai Vankar examined at Exh.22 has stated that when the incident had taken place near the house of the complaint he had gone there and observed that the respondent No.2 as well as Galabhai Ghamanbhai Vankar i.e. accused No.5, Ghamanbhai Jeeva Vankar, i.e. accused No.6 and Parmoben Veera Vankar, i.e. accused No.7 were present. This witness claimed that he had seen respondent No.2 giving a blow with stick on the leg of Puriben. However, this witness has not referred to the presence of accused No.2 to 4 at all which contradicts the case of the injured Puriben that the accused Nos. 1 to 4 had committed trespass into her house and given fist and kick blows to her. Again the so-called eye witness Methabhai Rajabhai has admitted in his cross-examination that he had seen respondent No.2 giving stick blow to Puriben near the house of Natha Gala which means that the case of Puriben that respondent No.2 had committed trespass into her house and thereafter had given stick blows to her in her house stands completely contradicted if the evidence of witness Methabhai Rajabhai is to be believed to be true. In facat the evidence of this witness clearly shows that the place of incident was not the part of house of the appellant and is changed by injured Puriben for reasons best known to her. This witness also has not referred to the presence of the accused Nos. 2 to 4 at the house of the complainant. If in fact the incident had been witnessed by this witness, the witness would not have omitted to refer to the presence of accused Nos. 2 to 4 at or near the house of the complainant at all. Under the circumstance, it becomes doubtful whether he had witnessed the incident at all. The submission that the learned Magistrate has acquitted respondent No.2 by noticing minor discrepancies in the evidence of the witness, and therefore, acquittal should be reversed has no substance. The contradictions which have been noted by the learned Magistrate in the evidence of witnesses cannot be termed as minor discrepancies. The discrepancies which are evident from the evidence of the witnesses examined by the appellant go to the root of the

case of Puriben and affects the substratum of the case of the appellant. The tendency to exaggerate things and to implicate innocent persons falsely in the case is evident, and therefore, in my view, it cannot be said that any error was committed by the learned Magistrate in disbelieving the case as pleaded by the appellant and in acquitting respondent No.2.

6. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Magistrate who had opportunity to observe demeanour of the witnesses. As I am in general agreement with the view expressed by the learned Magistrate, I do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Magistrate and in my view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, AIR 1967 SC 1124, and (2) State of Karnataka v. Hema Reddy and another, AIR 1981 SC 1417. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents. The learned Counsel for the appellant has failed to convince me to take the view contrary to the one already taken by the learned Magistrate and therefore, the appeal is liable to be rejected.

7. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

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msp.